PUBLIC PROSECUTOR

v.

ROXAS TANHAJI & ANOR.

HIGH COURT SABAH & SARAWAK, KOTA KINABALU
TUAN TEE AH SING JC.
[CRIMINAL REVISION K43-03-94]
25 OCTOBER 1994

CRIMINAL LAW: *Sentencing - Charge under s. 135(1)(e) Customs Act 1967 - Trial Magistrate imposing sentence of imprisonment - Whether lawful - Whether High Court can exercise its powers of revision.*

Both accused pleaded guilty to a charge under s. 135(1)(e) of the Customs Act 1967 and punishable under s. 135(1)(iii) of the same Act. The learned Magistrate sentenced the accused to 6 months imprisonment each and also fined them RM10,000 each, in default 12 months imprisonment. The case was sent to the High Court for revision.

Held:

[1] It is abundantly clear that under s. 135(1)(iii) of the Customs Act 1967 there is no provision for the imposition of a sentence of imprisonment. The sentence of 6 months imprisonment imposed by the learned Magistrate on both accused is illegal as being in contravention of s. 135(1)(iii) of the Customs Act 1967 and s. 87(1) of the Subordinates Courts Act 1948. In the circumstances the learned Magistrate has clearly exceeded his jurisdiction in imposing the sentence of imprisonment.

[2] In the exercise of the Courts powers of revision, the sentence of imprisonment imposed on the accused is set aside. As the accused did not pay the fine imposed, the time they have already spent in prison should be taken into consideration for their default sentence.

[Orders accordingly]

Legislation refered to:
Customs Act 1967, s. 135(1) (iii) (e)
Subordinate Courts Act 1948, s. 87 (1)

For the public prosecutor - Mohd. Yazid bin Mustafa, SFC
For the both accused appearing - in person

JUDGMENT

Tee Ah Sing JC:

On 10 September 1994, the 1st accused and the 2nd accused were jointly charged under s. 135(1)(e) of the Customs Act 1967 (Revised - 1980) and punishable under s. 135(1)(iii) of the same Act in the Magistrate's Court Federal Territory of Labuan.

Both accused pleaded guilty.

Both of them were sentenced to 6 months imprisonment each and also fined RM10,000 each in default 12 months imprisonment.

The learned Magistrate realising his mistake that there is no provision under s. 135(1)(iii) of the Customs Act 1967 (Revised - 1980) for the imposition of a term of imprisonment referred this case for revision.

For an offence under s. 135(1)(e) of the Customs Act 1967 (Revised - 1980) the punishment is provided for under s. 135(1)(iii) which reads as follows:

> (iii) in the case of prohibited goods be liable to a fine of not less than ten times the value of the goods or ten thousand ringgit, which ever is the lesser amount and of not more than ten times the value of the goods or ten thousand ringgit which ever is the greater amount:

Provided that where the value of the goods cannot be ascertained the penalty may amount to a fine not exceeding ten thousand ringgit.

Further s. 87 (1) of the Subordinate Courts Act 1948 provides as follows:

> 87(1). A First Class Magistrate may pass any sentence allowed by law not exceeding...

It is abundantly clear that under s. 135(1)(iii) of the Customs Act 1967 (Revised - 1980) there is no provision for the imposition of a sentence of imprisonment. I am clearly of the view that the sentence of 6 months imprisonment imposed by the learned Magistrate on both accused is illegal as being in contravention of s. 135(1)(iii) of the Customs Act 1967 (Revised - 1980) and s. 87(1) of the Subordinate Courts Act 1948. In other words the learned Magistrate exceeded his jurisdiction.

I would advise Magistrates that before they proceed to pass any sentence they should make it a habit to refer to the relevant sections of the law to ensure that the sentence which they are minded to impose is in accordance with the law. I am of the view that time expended for this purpose would certainly be regarded as well spent. This will also ensure that there will be no miscarriage of justice.

In view of the foregoing in exercise of my powers of revision, I set aside the sentence of 6 months' imprisonment imposed by the learned Magistrate against each accused. The sentence of a fine of RM 10,000 in default 12 months imprisonment imposed on each accused is hereby confirmed.

In this case both accused did not pay the fine imposed. So I make an order that the time they spent in prison should be taken into consideration for their default sentence.